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**Butler, David**

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**From:** Jack Pringle [jpringle@ellislawhorne.com]  
**Sent:** Tuesday, July 19, 2005 4:29 PM  
**To:** Butler, David  
**Cc:** Wendy Cartledge; Melchers, Joseph; Pratt, Douglas  
**Subject:** RE: ATX Licensing, Inc.-Docket No. 2005-23-C-ORS Comments on Late-filed exhibit

Dear David-

Your missive to the ORS regarding the late-filed exhibit indicated that "you have a right to respond to this exhibit and/or state a position with regard to it, if you so desire." While the parameters for response you set are admittedly broad, I don't believe that the ORS' "suggestion" or request" is appropriately made after the hearing. I would surmise that the purpose of a response to a late-filed exhibit would be to comment on its admissibility, credibility, and/or other evidentiary factors related to the exhibit itself, or to respond to the assertions contained in the exhibit. The ORS request, on the other hand, asks the Hearing Examiner to order relief, in the context of this Docket, that does not relate to the information contained in or any issue raised by, the late-filed exhibit. As set forth below, that ATX had earned intrastate revenues prior to certification was admitted at the hearing (and prior to the hearing in the Company's application). Had such a request been made at the hearing, the Applicant would have had a chance to present its position with respect to any such refunds, rebut the ORS' position, respond to the questions of the Hearing Examiner on the topic, etc -- all on the record. Applicants are sorely disadvantaged at having to respond off the record to a request that should appropriately have been made at the hearing.

Of course, in order to properly advocate on behalf of my client, I am forced to actually respond to the ORS' position, keeping in mind that doing so may moot the argument I made in the previous paragraph. Recall that the Company witness admitted that the Company had earned intrastate revenues prior to certification, and then went on to explain that these revenues were earned in the context of existing out of state customers with offices in South Carolina deciding to take service in South Carolina. Thus, the ORS knew at the hearing that the Company had earned intrastate revenues prior to certification, and the ORS could have made such a request to the Hearing Examiner at that time.

Further, the ORS' request references generally certain Commission orders that have ordered refunds, without specific citation to any of them or to the specific statutory or regulatory authority that would allow these refunds. While I never appeared before Madame Chairman Amos-Frazier or battled Fred Walters on behalf of the first long distance carriers certified by the Commission, I can say in my experience that those carriers I have helped certify who have operated in South Carolina prior to certification have not been required to refund intrastate revenues to their customers -- even those companies who slammed South Carolina customers prior to certification. Of course, there is no allegation here that ATX South Carolina customers have been slammed, crammed, or otherwise disadvantaged.

Put another way, it is unclear what protections these customers have missed out on by virtue of the Company lacking South Carolina certification, that they would have enjoyed had the Company been certified. There is no allegation that the Company wilfully avoided the certification process, or tried to use its "unregulated" status as a means to impact the public interest in a negative way. Moreover, when ATX discovered its non-compliance, it immediately applied to the Commission for certification.

Recall that these customers were existing ATX customers who wanted the ability to have their satellite offices receive the service they got in other states, and willingly chose and purchased intrastate service from ATX.

I fail to see how the public interest could be served by refunding to customers those revenues they paid for services they wanted at prices they negotiated. There is no allegation or proof that the services in question were unwanted, considered lacking, or priced unreasonably.

In sum, the Company opposes the ORS' request.

Jack Pringle

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